

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1565

Rulemaking

SPONSOR(S): Economic Development & Community Affairs Policy Council, Governmental Affairs Policy Committee, Dorworth, Ford and others

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Affairs Policy Committee	14 Y, 0 N, As CS	McDonald	Williamson
2) Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	McDonald	Tinker
3) House Vote on Final Passage	113 Y, 0 N		
4)			
5)			

SUMMARY ANALYSIS

Currently, under the Administrative Procedure Act, each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses, small counties, and small cities. Under the current process, an agency is required to provide the Small Business Regulatory Advisory Council (Council) and the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor with notice of a proposed rule that affects small businesses 28 days prior to its adoption. The Council has 21 days after it receives notice of a rule to review the impact of that rule on small businesses and offer alternatives to lessen the identified impact. If an agency does not adopt all alternatives offered by the Council, it must, prior to rule adoption or amendment, file a detailed written statement with the Joint Administrative Procedures Committee and the Council explaining the reasons for failure to adopt the alternatives.

The bill requires an agency to prepare a statement of estimated regulatory costs (SERC) prior to the adoption, amendment, or repeal of any rule that has an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within 1 year after implementation of the rule. When a lower regulatory cost alternative to a proposed rule is submitted to an agency, it is required to revise the earlier SERC and either adopt the alternative or give a statement of the reasons for rejecting the alternative in favor of the proposed rule. If a lower cost alternative is offered, the 90-day period for filing the rule is delayed 21 days to give time for analysis and response; timeframes relating to revised SERCs also are revised. The bill provides certain exceptions to the 90-day limitation and for the renewability of emergency rules. The grounds for challenging the validity of a SERC are revised.

The requirements for a SERC are expanded to include an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact, within five years after rule implementation, on economic growth, private-sector job creation, or employment in excess of \$1 million in the aggregate; or business competitiveness, including private-sector investment, productivity, innovation, or ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets, in excess of \$1 million in the aggregate. Also, the economic analysis must include whether the proposed rule directly or indirectly increases regulatory costs, including any transactional costs in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. If the economic analysis portions of the SERC indicate the proposal will do any of the things reviewed in the economic analysis, the rule must be submitted to the President of the Senate and the Speaker of the House of Representatives 30 days before the next regular legislative session. The rule may not take effect until ratified by the Legislature.

The bill amends certain timeframes for rule challenge in the Administrative Procedure Act to reflect other expanded timeframes in the bill. The bill also deletes an unnecessary prohibition relating to the impairment of contracts.

Finally, the bill gives agencies authority to establish by rule the time period within which any requested information regarding an application for a license or permit must be submitted to the agency, provides for extensions, and provides for processing application without such information.

The bill has an indeterminate fiscal impact. See "Fiscal Comments."

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Administrative Procedure Act¹

Joint Administrative Procedures Committee²

Within the Administrative Procedure Act, the responsibility of the Joint Administrative Procedures Committee (Committee) of the Legislature is delineated. As a legislative check on legislatively created authority, the Committee is required to examine every proposed rule, unless exempted by law, and may examine existing rules to make certain determinations. Among those are such things as:

- Is the rule an invalid exercise of delegated legislative authority?
- Has the statutory authority for the rule been repealed?
- Is it in proper form, was proper notice given, and was it adequate for the purpose and effect of the rule?
- Is it consistent with expressed legislative intent?
- Is it a reasonable implementation of the law as it affects persons impacted?
- Is it necessary to implement the law cited?
- Could regulatory costs on the regulated persons, county, or city impacted by the rule be reduced by adoption of a less costly alternative?
- Could the rule be made less complex or more easily understandable by the general public?
- Does the rule require an additional appropriation?
- If an emergency rule, is the emergency status justified?³

If, after review of a proposed rule and any information required from an agency, the Committee objects to the rule, it must, within 5 days, certify the objection to the agency along with its detailed concerns. The Committee also notifies the Speaker of the House of Representatives and the President of the Senate.⁴

Within 30 to 45 days of receipt of the objection, an agency, depending upon its structure, must do the following:

¹ Codified as chapter 120, F.S.

² See s. 120.545, F.S.

³ See s. 120.545(1), F.S.

⁴ See s. 120.545(2), F.S.

- If the rule is not in effect, it must notice modifications of the rule that address the Committee's concerns or withdrawal of the rule or notify the Committee that it refuses to do either.
- If the rule is in effect, it must notice to amend the rule to address the Committee's concerns or to repeal the rule or to notify the Committee that it refuses to do either.
- If the objection is with the statement of estimated regulatory costs (SERC), the agency must prepare a corrected SERC, notice it, and send a copy to the Committee or notify the Committee that it will not comply.⁵

If an agency refuses to respond within timeframes required for a proposed rule, the rule is considered withdrawn. All other lack of responses are considered refusals to take action by the agency.⁶

If the Committee objects to a rule, or portion of a rule, and the agency does not begin administrative action consistent with the objection within 60 days after objection or fails to proceed in good faith to complete the action, the Committee then makes recommendations for change in the law, if determined necessary. Those recommendations for change, if any, are presented as legislation to come before the House of Representatives and Senate for consideration just as are other issues.⁷

An agency is notified of the Committee's vote to introduce legislation. The Committee may request the agency temporarily suspend the rule or its adoption "pending consideration of proposed legislation during the next regular session of the Legislature."⁸

An agency has 30 to 45 days to respond to the Committee's request to suspend the rule or its adoption. Failure to respond is considered refusal to act. Nothing prevents an agency from refusing to take action as requested by the Committee.⁹

If legislation addressing the objections fails to become law, the temporary rule suspensions by an agency expire.¹⁰

Statement of Estimated Regulatory Costs (SERC)

An agency is encouraged to prepare a SERC prior to the adoption, amendment, or repeal of any rule other than an emergency rule. A SERC affecting small businesses, however, must be prepared by an agency and must not be limited to only those proposed rules that have an adverse impact on small business, but any rule that affects a small business.

A SERC must include the following:

- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues;
- A good faith estimate of the transactional costs¹¹ likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule;
- An analysis of the impact on small businesses and an analysis of the impact on small counties and small cities;
- Additional information that the agency determines may be useful; and

⁵ See s. 120.545(3)(c), F.S.

⁶ See ss. 120.545(4), (5), and (6), F.S.

⁷ See s. 120.545(8), F.S.

⁸ See s. 120.545(8)(b)1., F.S.

⁹ See s. 120.545(8)(b)2., F.S.

¹⁰ See s. 120.545(8)(d), F.S.

¹¹ According to s. 120.541(c), F.S., "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

- A description of any good faith written proposal submitted for a lower cost regulatory alternative to a proposed rule that substantially accomplishes the objective of the law being implemented and a response by the agency.

Any substantially affected person may submit a written proposal for a lower cost regulatory alternative. Once submitted, an agency is required to do a SERC or revise an existing SERC. The agency must adopt the alternative or give reasons for rejecting it. Failure of the agency to prepare or revise a SERC is considered a material failure to follow rulemaking procedures.

The time frame and basis for a challenge to the validity of a rule based upon the imposition of regulatory costs on the regulated person, county, or city as they relate to a SERC are delineated.¹²

Rules Relating to Small Cities and Small Counties

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small cities and small counties. A small city is defined as a municipality with a population of 10,000 or less unincarcerated persons; however, the population can be more than 10,000 under specified circumstances needed for the adoption of rules. A small county means a county with an unincarcerated population of 75,000 or less; however, the population can be more than 75,000 if needed for the adoption of rules. An agency may use a tiering of rules to avoid a disproportionate impact as well as using other methods of impact reduction that are specified.¹³

Rules Relating to Small Business

Each agency, before the adoption, amendment, or repeal of a rule, is required to consider the impact of the rule on a small business and a SERC must be prepared. A small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million, or any firm based in this state that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement includes both personal and business investments.

Under the current process, an agency is required to provide the Small Business Regulatory Advisory Council (Council) and the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor with notice of a proposed rule that affects small businesses 28 days prior to its adoption. The Council has 21 days after it receives notice of a rule in which to review the impact of that rule on small businesses and offer alternatives to lessen the identified impact. According to the staff of the Joint Administrative Procedures Committee, the Council meets once each month, which means that the 21 day deadline is sometimes past before the Council has had time to consider a rule.¹⁴ Under current law, if the Council does offer a small business alternative, the time limit for adopting the rule is extended 21 days, within which time the agency must consider the alternative, revise its statement of estimated regulatory costs as necessary, and accept or reject the alternative. If an agency does not adopt all alternatives offered by the Small Business Regulatory Advisory Council, it must, prior to rule adoption or amendment, file a detailed written statement with the Joint Administrative Procedures Committee and the Council explaining the reasons for failure to adopt the alternatives.¹⁵

Additionally, agency notices and reports relating to impacts on small business must be sent in writing to the Council and the Joint Administrative Procedures Committee.

Every two years, agencies review their rules and provide a report to the Speaker of the House of Representatives, the President of the Senate, and the Joint Administrative Procedures Committee regarding changes made to rules that promote efficiency, reduce paperwork, or decrease costs to government and the private sector. In 2008, this requirement was changed to include the economic impact on small businesses. The 2010 report is due October 1.¹⁶

¹² See s. 120.541(1)(c), F.S.

¹³ See s. 120.54(3)(b)2.a., F.S.

¹⁴ Information received from the Joint Administrative Procedures Committee staff on March 3, 2010.

¹⁵ See s. 120.54(3)(b), F.S.

¹⁶ See s. 120.74, F.S., and s. 8, ch. 2008-149, L.O.F.

Office of Tourism, Trade, and Economic Development¹⁷

The Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor is responsible for "considering the impact of agency rules on businesses" and for serving "as an advocate for business, particularly small businesses, in its dealings with state agencies."¹⁸ OTTED is charged with reviewing proposed agency actions for impacts on small businesses and with offering alternatives to mitigate those impacts. Also, in consultation with the Governor's rules ombudsman, OTTED has the power and duty to make recommendations to state agencies on "any existing and proposed rules for alleviating unnecessary or disproportionate adverse effects to businesses."¹⁹

Small Business Regulatory Advisory Council²⁰

The Small Business Regulatory Advisory Council, an advisory body created in 2008, may make recommendations to agencies on proposed rules or programs that adversely affect small businesses, consider requests from small businesses to review rules or programs adopted by an agency, and review rules promulgated by an agency to determine whether a rule places an unnecessary burden on small businesses and make recommendations to the agency to mitigate the adverse effects.²¹ The Council actively participates in the Administrative Procedure Act rule review and recommendation process for state agency rules affecting small businesses.

Challenges to Rules²²

Under current law, any substantially affected person can seek an administrative determination of a proposed rule's invalidity by filing a petition. The petition must be filed within 21 days after the date of publication of the notice, within 10 days after a final rule hearing, or within 20 days after the SERC has been provided to all persons who submitted a lower cost regulatory alternative have been publicly notified.²³

Current law provides that when the Division of Administrative Hearings enters a final order that an agency statement violates the rulemaking requirements of s. 120.54, F.S., the agency must discontinue all reliance upon the statement as a basis for agency action. The statute further provides that this requirement may not be construed to impair the obligation of any contracts existing at the time the final order is entered.

Licensing²⁴

Current law provides that, upon receipt of an application for a license or permit, an agency must notify the applicant within 30 days of any errors or omissions and request any additional information. The statute is silent as to the time within which the applicant must provide the additional information. This has resulted in some inconsistent interpretations of the licensing process.²⁵

Effect of Proposed Changes

The bill makes significant changes to the Administrative Procedure Act relating to agency rules that require a prepared or revised statement of estimated regulatory costs (SERC), the elements of a SERC, the declaration of invalidity of a SERC, and the economic development thresholds that trigger legislative review and ratification of a rule before it may take effect.

¹⁷ Created in s. 14.2015, F.S. With the dismantling of the Department of Commerce in 1996, OTTED was created within the Executive Office of the Governor and assumed some of the roles of the Department of Commerce albeit on a smaller scale.

¹⁸ See s. 14.2015(6)(a), F.S.

¹⁹ See s. 14.2015(6)(b), F.S.

²⁰ Created in s. 288.7001, F.S., the advisory council is composed of nine members who are current or former small business owners, with three members appointed by the Governor, three by the Speaker of the House of Representatives, and three appointed by the President of the Senate. The advisory council is administratively housed in the Florida Small Business Development Center Network.

²¹ See s. 288.7001(3)(c), F.S.

²² Section 120.56, F.S.

²³ See s. 120.56(2), F.S.

²⁴ See ss.120.60(1) and (3), F.S.

²⁵ The issue of inconsistent interpretations was brought forward in discussion with staff of the Joint Administrative Procedures Committee.

The bill requires an agency to prepare a SERC prior to the adoption, amendment, or repeal of a rule that either has an adverse impact (rather than any impact, as in current law) on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate²⁶ in the state within one year after implementation of the rule.

The bill exempts an emergency rule from the 90-day effective period limitation and the renewability prohibition when an agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and the proposed rule is awaiting ratification by the Legislature. Nothing precludes the agency from adopting a rule identical to the emergency rule through the rule adoption process used for all rules.

The bill requires an agency to revise its SERC if any change to the proposed rule increases regulatory costs. At least 45 days before filing a proposed rule for final adoption, an agency must provide a copy of its revised SERC to the person who submitted the lower cost regulatory alternative and provide notice on its website that the document is available to the public.

An agency that fails to prepare or revise a SERC according to these new conditions has committed a material failure to follow the state's rulemaking procedures. However, the proposed rule is not declared invalid unless the issue is raised within one year after the rule's effective date and the agency's failure materially affects the substantial interests of the person challenging the agency. Additionally, any rule that is challenged by a substantially affected person because it is an "invalid exercise of delegated legislative authority"²⁷ imposing regulatory costs on a regulated person, city, or county that could be reduced by a lower cost alternative, may not be automatically declared invalid unless the issue is raised in an administrative hearing within one year after the rule's effective date; the challenge is to the agency's rejection of a lower cost alternative under one of two provisions of the Administrative Procedure Act;²⁸ and, the substantial interests of the person challenging the agency on its proposed rule are materially affected by the rejection of the lower cost alternative.

In addition to other required elements of a SERC, the bill requires the inclusion of an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact within five years after rule implementation, on:

- Economic growth, private-sector job creation, or employment in excess of \$1 million in the aggregate; or
- Business competitiveness, including private-sector investment, productivity, innovation, or ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets, in excess of \$1 million in the aggregate.

Also, it must include whether the proposed rule directly or indirectly increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after rule implementation.

The requirement for an economic analysis does not apply to the adoption of an emergency rule that addresses an immediate danger to the public health, safety, or welfare²⁹ or the adoption of federal standards.³⁰

Additionally, the required SERC impact analysis related to small business must include the basis for the agency's decision not to implement proposed alternatives to reduce adverse impacts.

²⁶ Since the aggregate cost statewide of \$200,000 is not limited to small business, the number of agency rules for which SERCs will be required will probably increase.

²⁷ Section 120.52(8)(f), F.S., provides that a rule that "imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives" is an agency action that is an "invalid exercise of delegated legislative authority."

²⁸ Sections 120.541(1)(a) and (3)(b)2.b., F.S.

²⁹ Section 120.54(4), F.S., provides guidelines for adopting emergency rules.

³⁰ Section 120.54(6), F.S., provides guidelines for adopting federal standards by rule.

The bill requires that any rule that has an adverse impact or regulatory cost exceeding the criteria of the economic analysis must be submitted to the President of the Senate and the Speaker of the House of Representatives. The rule must be submitted no later than 30 days before the next regular legislative session. It is prohibited from taking effect until ratified by the Legislature.

The bill amends rule challenge provisions in the Administrative Procedure Act to reflect the expanded timeframe for challenging a proposed rule after a SERC or revised statement has been prepared and made available.³¹ It also deletes an unnecessary prohibition relating to the impairment of contracts.³²

Finally, the bill authorizes agencies to establish, by rule, the time period within which any requested information regarding an application for a license or permit must be submitted to the agency and requires agencies to grant a request for an extension of that time for good cause shown. The bill also provides that if the applicant for licensure believes that the request for additional information is not authorized by law or rule, the agency must proceed with processing the application at the applicant's request.

B. SECTION DIRECTORY:

Section 1 amends s. 120.54, F.S., requiring each agency, before adopting, amending, or repealing certain rules, to prepare a SERC of the proposed rule if the proposed rule has adverse impacts on small businesses or increases regulatory costs; providing an exception to circumstances under which an emergency rule will not take effect.

Section 2 amends s. 120.541, F.S., providing circumstances under which an agency must prepare or revise a SERC; providing notice requirements; providing that an agency's failure to prepare a SERC or respond to a written lower cost regulatory alternative is a material failure to follow the applicable rulemaking procedures or requirements; specifying circumstances under which certain challenges may not be raised; providing exceptions; specifying the requirements for an economic analysis on a proposed rule or rule changes; requiring that a rule impact analysis for small businesses include the agency's basis for not implementing alternatives to a proposed rule; providing circumstances under which a rule will not take effect until ratified by the Legislature; providing that the act is not applicable to certain specified rules or standards.

Section 3 amends s. 120.56, F.S., providing for revised SERCs as a basis for challenging a rule.

Section 4 amends s. 120.60, F.S., authorizing an agency to provide by rule for the time period for submitting additional information needed for a license application; requiring that certain requests to receive notice relating to a license application be submitted in writing.

Section 5 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

It is unknown how the bill will affect state government revenues.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³¹ *Ibid.*

³² See s. 120.56(4), F.S.

1. Revenues:

It is unknown how the bill will affect local government revenues.

2. Expenditures:

It is unknown how the bill will affect local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. There could be a negative impact on businesses caused by delays in review and ratification of rules; or there could be a potentially positive impact on small businesses and other affected private sector businesses because of the delay in implementation or the potential revision to rules that would be more favorable to their business interests.

D. FISCAL COMMENTS:

Although indeterminate, the bill will increase expenditures relating to the number of SERCs that agencies must prepare in addition to the economic analysis of certain issues that must be done by agencies as part of the new SERC requirements. It is unknown whether agencies will be able to perform such economic analyses with their own staff or will have to seek outside assistance in the preparation.

Although indeterminate, the bill will increase the workload of staff of the Joint Administrative Procedures Committee because they will be reviewing a SERC for proposed rule adoptions, amendments, or repeals that meet the criteria for the development of and revision of a SERC. Additionally, staff will potentially be involved in the review of rules meeting the requirements for ratification by the Legislature.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Section 3, Art. II of the State Constitution provides that the powers of state government are divided into legislative, executive, and judicial branches. Specifically, “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

In *St. John’s River Water Management District v. Consolidated-Tomoka Land Co.* the court stated: Rulemaking is a legislative function, and, as such, it is within the exclusive authority of the Legislature under the separation of powers provision of the Florida Constitution ... a state administrative agency has no authority to adopt rules apart from the authority delegated to it by the Legislature.³³

The Court held in part that, because rulemaking is a legislative function, the Legislature has authority to replace a judicially created test to determine the validity of a rule.³⁴

Section 120.52(8), F.S., is very clear that an agency cannot adopt a rule merely because it is somehow relevant to the objectives in the law or that it is “reasonably related to the purpose of the

³³ 717 So.2d 72 (Fla. 1st DCA 1998).

³⁴ *Id.*

enabling legislation.” Agency rulemaking is limited to the adoption of “rules that implement or interpret the specific powers and duties granted by the enabling statute.”

Rulemaking is not a constitutionally given right to the executive branch of government. Rulemaking is granted by the Legislature in law to the executive branch of government. It is a legislative function. As such, the Legislature controls rulemaking and is authorized to provide criteria when delegating rulemaking to the executive branch of government.

B. RULE-MAKING AUTHORITY:

The bill has a significant effect on rulemaking authority of agencies. The bill has an impact on the legislative review process and workload of the Joint Administrative Procedures Committee and its staff.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A possible technical deficiency in the bill is that the terms "adverse" and "private sector" are not defined which may cause discrepancies in interpretation of the requirements of the law.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Governmental Affairs Policy Committee

On March 25, 2010, the Governmental Affairs Policy Committee adopted a strike-all amendment to HB 1565 and passed the bill as a committee substitute. The committee substitute does the following:

- Requires an agency to prepare a SERC prior to the adoption, amendment, or repeal of any rule, not just those having an impact on small business or those requested by a substantially affected person.
- Requires that a SERC include an economic analysis that shows if a rule creates a regulatory environment that impedes or hinders economic growth and private-sector job creation; expands the growth of state government that is not provided in the enabling statute for the rule; increases regulatory costs to small businesses; and is likely to adversely impact private-sector job creation or result in higher unemployment.
- Requires the Joint Administrative Procedures Committee to determine whether a SERC prepared by an agency complies with the requirements for an economic analysis as well as existing requirements for a SERC.
- Provides that if the economic analysis portions of the agency SERC indicate the proposal will do any of the things reviewed in the economic analysis, the rule may not take effect until it is submitted to the Legislature for review at the next regularly scheduled session.
- Provides that the Legislature may reject, modify, or take no action pertaining to the rule. If the Legislature takes no action, the rule will take effect upon adjournment sine die by the Legislature.

Economic Development & Community Affairs Policy Council

On April 16, 2010, the Economic Development & Community Affairs Policy Council adopted a strike-all amendment to CS/HB 1565 and passed the bill as a council substitute. The council substitute does the following:

- Expands the provisions relating to required SERCs from rules affecting small businesses to include any rule with an adverse impact on small business or any rule that is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state.
- Extends timeframes for rule adoption if a substantially affected person submits a lower cost regulatory alternative to a proposed rule; revises timeframe for providing information on a revised SERC and taking action on the rule; and requires the agency to post certain information on its website.
- Revises information contained in a SERC and requires a SERC to include an economic analysis of certain specified factors.
- Exempts rules adopting federal standards and certain emergency rules from the required economic analysis portion of the SERC.
- Revises requirements for declaring rule invalidity.

- Requires certain rules exceeding limits of economic analysis criteria to be sent to the President of the Senate and Speaker of the House of Representatives at least 30 days before the next regular legislative session.
- Requires that a rule sent to the Legislature may not take effect until ratified.
- Expands timeframe for certain rule challenges and deletes an unnecessary provision relating to the prohibition of certain impairment of contracts.
- Authorizes an agency to provide, by rule, the time period for submitting certain information for a license application and to require certain requests for notice to be submitted in writing.

Floor Activity

On April 22, 2010, Members of the Florida House of Representatives adopted floor amendments to CS/CS/HB 1565 and rolled the bill over to third reading, and, on April 26, 2010, Members adopted additional floor amendments on third reading and approved the bill for final passage.

The bill provided that, if a substantially affected person submits a written, good-faith lower cost regulatory alternative to a proposed rule, then the current 90-day window for the agency to file for formal adoption of the rule is extended an additional 90 days, replacing the current 21-day extension. The floor amendments remove the 90-day extension and reinstates the 21-day extension found in current law.

The bill required an agency to prepare a SERC prior to the adoption, amendment, or repeal of a rule that either has an adverse impact (rather than any impact, as in current law) on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state. The floor amendments clarify that this applies to regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule.

The bill required the inclusion of an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of \$1 million in the aggregate on:

- Economic growth;
- Private-sector job creation or employment;
- Business competitiveness;
- Private-sector investment;
- Productivity;
- Innovation; or
- Ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets.

The floor amendments clarify that this applies to an adverse impact or a direct or indirect increase in regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after rule implementation.

The floor amendments also:

- Reinstate the requirement that an agency either prepare a SERC or revise its current SERC when a proposal for lower regulatory costs is submitted.
- Revise language relating to challenging the validity of a rule by specifically stating that failure to "respond to a written lower cost regulatory alternative" is a material failure to follow rulemaking procedures.
- Provide that when challenging the validity of a rule based on failure to prepare a SERC or to respond to a lower regulatory cost proposal, a person cannot raise such failure in a proceeding challenging the validity of a rule unless such failure is raised in a petition filed no later than 1 year after the effective date of the rule; and such failure must be raised by a person whose substantial interests are affected by the rules regulatory costs.
- Remove superfluous language.